

# Overview-- Changes to Existing Solid Waste Rules

## Effective Date July 1, 2014



The NH Solid Waste Rules, Env-Sw 100 to Env-Sw 2000, are being readopted with amendments, and will become effective on July 1, 2014. Below is a brief overview of the major changes, to help facility owners/operators, municipalities and other interested parties better navigate the rules and understand the changes.

### **I. Permits and Permitting Procedures**

The existing rules in Env-Sw 300 establish the framework of the solid waste facility permit system and the procedures for issuance, denial, modification, suspension and revocation of permits. Effective July 1, 2014, those rules will be readopted with the following key amendments.

#### **1. Filing Provisions for Applications, Registrations, and Reports---**

- Env-Sw 303---Amend the filing procedures to allow electronic submittals and reduce the number of required paper copies.

#### **2. General Permits**—Amend the following rules to establish the framework for a new category of permits known as “General Permits” per RSA 149-M:6,III and RSA 149-M:59 – 60. (The actual sector based permits will be established in future rulemakings.)

- Env-Sw 302.04(f)---Add “General Permits” to the list of available permit types.
- Env-Sw 314.01(b)(6)---Add the General Permit option to the list of circumstances to be considered when determining the applicability of a Standard Permit, as per statute.
- Env-Sw 315.01(e)---State that General Permits are not subject to modification.
- Env-Sw 1101.02(a)(4)---Exempt General Permit facilities from Env-Sw 1100.
- Env-Sw 1401.02(b)(7)---Exempt General Permit facilities from Env-Sw 1400.

#### **3. Permit-by-Notification**---Amend the following rules to simplify and reduce paperwork requirements for obtaining a Permit-by-Notification, applicable to eligible facilities only. (To identify eligible facilities, see Env-Sw 407, Env-Sw 507, Env-Sw 607, and Env-Sw 707.)

- Env-Sw 305.05---Amend the procedures for issuing permits-by-notification, so that the completed application form no longer will serve as the permit.
- Env-Sw 311---Amend the notification/application requirements to:
  - Eliminate the requirement to submit a site plan and, instead, require the applicant to affirm in writing that all siting requirements are met;
  - Add provisions for DES to audit the applicant’s records to verify permit compliance and verify that all siting requirements are in fact met; and
  - Change the procedures for issuing a permit-by-notification, in conformance with the proposed changes in Env-Sw 305.05.

### **II. Facility Design and Operation Requirements**

The existing rules in Env-Sw 400 through Env-Sw 800 and Env-Sw 1000 through Env-Sw 1200 establish facility siting, design, construction, operation, and closure requirements, based on type of facility, duration of operation, and type of permit. Effective July 1, 2014, those rules will be readopted with the following key amendments.

#### **1. All Facilities**---Amend the requirements in Env-Sw 1100, which apply to facilities with either a Standard Permit or Permit-by-Notification that operate longer than 90 days, as follows:

- Env-Sw 1103.01(b)(3) —Add a comparative risk consideration when uncommon designs are proposed.
- Env-Sw 1105.13—Add a requirement for a compliance certification to be included with the Annual Facility Report for operating facilities and clarify related signature requirements.

**2. New Permit-by-Notification Facilities---**Amend Env-Sw 1203.01(f) to restrict facilities seeking a Permit-by-Notification after the 2014 effective date of the rules from being sited in a location that would violate the provisions of any groundwater management permit issued pursuant to Env-Or 600.

**3. Collection, Storage and Transfer Facilities---**Amend the existing rules in Env-Sw 400, which apply to collection, storage and transfer facilities, as follows.

- Env-Sw 405.03 --- allow putrescible waste to be stored longer than 7 days as long as performance standards are maintained and the provisions are part of an approved operating plan.
- Env-Sw 407.02 --- allow Limited Public Transfer Stations operating under a Permit-by-Notification to compost food waste under that same permit, rather than having to obtain a separate permit for that activity.
- Env-Sw 408.06 --- for permit-exempt Waste-in-Transit Storage Areas, clarify acceptable container requirements, increase the allowable storage capacity from 150 to 300 cubic yards and increase the allowable storage time from 4 to 5 days to reflect current transportation practices.

**4. Incinerators---**Amend the existing rules in Env-Sw 700 applicable to solid waste incinerators as follows:

- Add a new section Env-Sw 705.06, listing the waste types that are prohibited by state statute from being combusted.
- Eliminate obsolete rules in Env-Sw 707.02 that provided a Permit-by-Notification option for operation of certain infectious waste incinerators. (No such facilities exist or are likely to exist, largely due to air quality restrictions through the Clean Air Act.)

**5. Landfills---**Amend the existing rules in Env-Sw 800 applicable to landfills as follows.

- Env-Sw 804.04(d) and Env-Sw 805.11(l) --- establish requirement for a 500 foot vegetated buffer from a landfill footprint to residential property lines at new landfill sites.
- Env-Sw 805.05(h) --- limit the slope of liner geomembranes to 2:1.
- Env-Sw 805.05(j) --- prohibit landfill bottom liner penetrations by appurtenances, such as pipes, in areas where leachate can collect.
- Env-Sw 805.10(p) --- limit the average slope of capping systems to a 2.5:1.
- Env-Sw 805.17, articulate vertical expansion design requirements for landfills, including the need for conforming double liner systems and stability criteria for mechanically-stabilized earth (MSE) berms. (See also new definitions in Env-Sw 100 for the terms “mechanically stabilized earth berm and “vertical expansion.)
- Env-Sw 806.07 --- specify that the landfill permittee must maintain authority for complete operational control of active gas management systems.
- Update the list of wastes in Env-Sw 806.12 that are banned from being landfilled, per statute.

### **III. Financial Assurance**

The existing rules in Env-Sw 1400 specify requirements for solid waste facilities to provide financial assurance. Effective July 1, 2014, those rules and rules in Env-Sw 807 pertaining to financial assurance for landfills will be readopted with the following key amendments.

- 1. Applicability and Exemptions**---In Env-Sw 1401.02, specify that the financial assurance requirements do not apply to publicly owned non-Subtitle D landfill facilities, for example, publicly owned transfer stations, recycling facilities, landfills not subject to federal Subtitle D regulations and composting facilities. (Note: This proposed exemption does not apply to publicly owned Subtitle D landfills, which are required to have financial assurance by the federal rules.)
- 2. Cost Estimation**---In Env-Sw 1403.02, clarify and change the requirements for calculating the amount of financial assurance as follows.
  - Specify that the required amount of financial assurance shall be based on a rolling/continuous 30-year post-closure period until such time as the permittee demonstrates a reduction is warranted based on conditions at the facility. For landfills, see also proposed related amendment to Env-Sw 807.05(c).
  - At landfills, include the cost of replacing 20% of the existing active gas collection system at Subtitle D landfills.
  - For all landfills and for other facilities with closure cost estimates of \$50,000 or more, include the cost of having a qualified professional oversee all closure activities.
- 3. Allowable Mechanisms**---In Env-Sw 1403, amend the existing allowable financial assurance mechanisms to:
  - Add a requirement that letters of credit must be issued by institutions in good standing and must include pending bankruptcy notification provisions.
  - Limit acceptable insurance policies to being “claims incurred” policies.
  - Clarify that standby trust accounts must be established by a financial institution regulated and examined by a federal or NH state agency.
  - Allow publicly owned Subtitle D landfills to provide financial assurance through a capital reserve fund and, for those facilities owned and operated by a single municipality, the local government financial test.
- 4. Periodic Updates**---For all facilities except Subtitle D landfills, change the frequency of updating financial assurance cost estimates from every year to every three years.

### **IV. Management of Specific Wastes**

- 1. Animal Mortalities**---
  - Amend Env-Sw 302.03(b) to provide a permit exemption, in emergency situations, for on-site management of animal mortalities under the direction of the state veterinarian.
  - Amend the rules in Env-Sw 600 to provide a conditional permit exemption for composting animal mortalities in accordance with Best Management Practices (BMPs) established by the NH Department of Agriculture and amend Env-Sw 1503.10 to recognize use of the resultant compost in accordance with those same BMPs.
  - Amend Env-Sw 708.03 to provide a permit exemption for animal crematoriums that incinerate only animal carcasses not classified as infectious waste.

2. **Asbestos** ---Adopt a new rule, Env-Sw 407.06, to establish the option for licensed asbestos abatement contractors to obtain a Permit-by-Notification to establish and operate a Temporary Asbestos Waste Staging Facility under limited conditions. The Asbestos Waste Staging Facility is not for general citizen drop-off and is only for the use of the abatement contractor holding the permit. Amend Env-Sw 1204.03(a) to accommodate the change.
3. **Concrete** ---Repeal the existing obsolete rule in Env-Sw 507.03 that provides a Permit-by-Notification option for operating a concrete processing facility. (Those facilities are already permit exempt per Env-Sw 302.03(b)(9).)
4. **Non-hazardous Contaminated Soils** ---Amend Env-Sw 903, which establishes requirements for managing certain non-hazardous contaminated soils, to make technical changes and update references. (Note: More comprehensive amendments are planned in separate rulemaking.)
5. **Wood Ash**---Amend the rules in Env-Sw 1700, which specify certification, testing, and reporting requirements for land applying wood ash for beneficial agricultural purposes, to:
  - Conditionally exempt from the certification requirements persons who generate 500 or fewer tons per year of wood ash and persons who distribute and use 500 or fewer tons per year of wood ash obtained from exempt generators.
  - Establish certain provisions for wood ash brokers to obtain certification for wood ash they handle on behalf of small generators.
  - Update testing requirements based on historical data.
  - Eliminate obsolete reference and requirement for a Farm Management Plan under the Department of Agriculture and replace it with reference to a site-specific plan.
  - Modify reporting requirements to reduce paperwork.

**V. Operator Training and Certification**---The existing rules in Env-Sw 1600 establish requirements for training and certification of solid waste facility operators. Effective July 1, 2014, DES is readopting those rules by reorganizing the entire chapter for clarity and amending the rules to update the program and eliminate barriers to advancement. The amendments include:

- Replace the existing five levels of certification (four of which are education and experience based and require applicants to pass a written examination) with two primary categories of certification (Assistant Operator, which requires training but no examination, and Principal Operator, which requires training and examination).
- For each category of operator, establish “step” designations that are obtained based on accrued hours of continuing professional development.
- Require all facilities to be managed by a Principal Operator. See also related rule amendments in Env-Sw 1005.06 (Operator Qualifications) and Env-Sw 1005.07 (Facility Staffing).
- Provide a transition from the existing system of levels to the new system.
- Clarify initial application and renewal requirements for certification.
- Update the rules for denial, suspension and revocation of certification to clarify procedures and establish grounds.